

BOARD OF APPEALS CASE NO. 5134

BEFORE THE

**APPLICANT: Streett Family LLC and My Three
Sons LLC**

ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit a
restaurant in the Village Business District;
2832 Churchville Road, Churchville**

OF HARFORD COUNTY

HEARING DATE: April 23, 2001

Hearing Advertised

Aegis: 3/21/01 & 3/28/01

Record: 3/23/01 & 3/30/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Streett Family LLC and My Three Sons, LLC are requesting a special exception pursuant to Section 267-53H(7) of the Harford County Code to permit a restaurant in the VB/Village Business District.

The subject property is located at 2832 Churchville Road and is more particularly identified on tax map 42, Grid 3D, Parcel 496. The subject parcel consists of 2.202± acres, is zoned VB/Village Business and is entirely within the Third Election District.

For the Applicants appeared Despina Mathioudakis who testified that she is a member of My Three Sons, LLC. The witness testified that her family plans to convert the existing High's store into a 2022 square foot restaurant. The current store is in a small strip center on Churchville Road just west of MD Route 136. Other uses in the immediate vicinity include two retail convenience stores, two gas stations, a veterinary clinic, professional services offices and a personal services office. The witness indicated that there is more than adequate parking space available and there are two access points on Route 22. None of the exterior will change and the build out of the restaurant consists of interior build-out only. The witness felt that the restaurant would not generate as much traffic as the High's store it is replacing and believed the restaurant will fill a need in this area of Churchville. The witness concluded that the conditions recommended by the Department of Planning and Zoning were acceptable to the Applicants and that this restaurant at this location would not result in unusual adverse impacts to neighboring properties.

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There were no persons who appeared in opposition to the request. The Department of Planning and Zoning recommends approval of the request finding that the Applicant's proposed use will meet or exceed all requirements of the Code and will be compatible with other uses in this rural village environment.

CONCLUSION:

The Applicants, Streett Family LLC and My Three Sons, LLC are requesting a special exception pursuant to Section 267-53H(7) of the Harford County Code to permit a restaurant in the VB/Village Business District.

Section 267-53H(7) provides:

“Restaurants.

(a) These uses may be granted in the VB and B1 Districts, provided that:

[1] The parking and access requirements of this Part 1 shall apply.

[2] The use is located with direct access to an arterial or collector road.”

The Hearing Examiner adopts, as findings of fact, the determinations of the Department of Planning and Zoning in regard to the provisions of Section 267-9I, which follow:

(1) The number of persons living or working in the immediate area.

The subject property is in the Rural Village area of Churchville, located on Churchville Road between the incorporated municipalities of Bel Air and Aberdeen. There are a number of RR Rural Residential and AG residential developments in the area. The Village of Churchville serves the needs of the residential and farming community. The proposed scale of this restaurant is appropriate at this location in the Rural Village.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

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The subject property is part of an approved commercial center that fronts on Churchville Road. The center was review, approved and built based on adopted plans. The conversion of the existing retail space to a restaurant will have no significant impact on the traffic pattern in this area. In fact, based on accepted criteria, the proposed restaurant will generate less traffic than the convenience store it will replace.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The subject property is zoned VB Village Business. Restaurants are permitted in this District as a special exception with Board of Appeals approval. The proposed use complies with the requirements of the Harford County Code, and the small scale of the restaurant is compatible with the surrounding uses and the intent of the Rural Village. Therefore, this proposal will contribute to the orderly growth in the area.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The conversion of the use will not adversely impact the community based on the items listed above.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The local Sheriff's Office and the Maryland State Police would provide police protection. The Churchville Volunteer Fire Company would provide fire protection. The site will be serviced by a private well and septic system. Garbage collection would be handled by a company of the Applicant's choice.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The proposed restaurant is permitted in the VB Village Business District as a special exception and is generally consistent with engineering and planning principles.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

The proposal should be compatible with the above uses.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

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The Master Plan promotes the focusing of commercial uses outside the Development Envelope within the designated Rural Villages.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

This subsection does not apply to the subject proposal.

- (10) The preservation of cultural and historic landmarks.

The adjacent Churchville Presbyterian Church and Cemetery is listed in Section 267-83 of the Harford County Code as a Harford County Historic Landmark. This proposal will not impact that site as no additional development is proposed and the restaurant will be located in an existing commercial building.

In addition, the Hearing Examiner concludes that the Applicant's proposed use meets or exceeds the provisions of Section 267-53H(7) of the Code. There is adequate parking available and the hearing Examiner notes that this location has already been subjected to site plan review and been approved. The requirement that the use have direct access to an arterial road is met by its location on MD Route 22.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

"...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner finds no facts leading to a conclusion that this use at this location would have adverse impacts above and beyond those normally associated with such a use regardless of its location within the zone and recommends approval of the special exception subject only to the Applicants obtaining any and all necessary permits and inspections.

Date MAY 30, 2001

William F. Casey
Zoning Hearing Examiner